

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
JOSEPH SIMON & SONS, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 81-191

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.03(b) of Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, presiding, and Gayle Rothrock, at a formal hearing at Sea-Tac International Airport, Seattle, Washington, on April 26, 1982.

Appellant was represented by Herbert Simon; respondent was represented by its attorney Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 Pursuant to RCW 43.21B.260, respondent has filed with the Board a  
4 certified copy of its Regulation I and amendments thereto, which are  
5 noticed.

6 II

7 On October 20, 1981, at about 8:14 a.m., respondent inspector  
8 observed smoke coming from the aluminum sweat furnace of appellant  
9 company. The inspector properly positioned himself and proceeded to  
10 make opacity observations. He made observations every fifteen seconds  
11 for a period of seven consecutive minutes. Using proper procedures,  
12 he observed opacities ranging from 45 percent to 65 percent during  
13 this period.

14 The emission was not coming from the stack but from the charging  
15 door of appellant's aluminum sweat furnace. The furnace had been  
16 rebricked and appellant's plant foreman had opened the charging door  
17 so he could observe whether or not the new bricks had been properly  
18 installed and cured. This was an upset condition as defined by  
19 Section 19.16 of Regulation I, but appellant did not notify respondent  
20 agency of the condition as required by subsection (1) of Section 19.16.

21 III

22 On August 10, 1981, respondent sent by certified mail Notice and  
23 Order of Civil Penalty of \$250 for the alleged violation of Section  
24 9.03(b) of respondent's Regulation I. The Notice and Order of Civil  
25 Penalty is the subject of the instant appeal.

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IV

Section 9.03(b) of respondent's Regulation I makes it a civil violation for any person to cause or allow the emission of any air contaminant for a period totaling more than three minutes in any one hour which is of an opacity equal to or greater than 20 percent.

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board enters these

CONCLUSIONS OF LAW

I

Appellant violated Section 9.03(b) of Regulation I by causing or allowing an emission of an air contaminant from its aluminum sweat furnace of an opacity in excess of 20 percent for over seven consecutive minutes. The emission was the result of an upset condition, but appellant failed to notify respondent of the condition as required by Section 9.16(1).

II

The penalty assessed by respondent should be affirmed. However, under the circumstances, \$50 of the penalty should be suspended.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

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ORDER

The \$250 civil penalty is affirmed, however, \$50 thereof is suspended on condition that appellant not violate respondent's regulations for a period of two years from date of appellant's receipt of this Order.

DATED this 5<sup>th</sup> day of May, 1982.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington  
NAT W. WASHINGTON, Chairman

Gayle Rothrock  
GAYLE ROTHROCK, Vice Chairman